CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 691

Heard at Montreal, Tuesday, December 12th, 1978

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Claims of Conductor R.J. Wright and crew, Medicine Hat, for junction switching at Irricana in accordance with Article 11, Clause (g) of the collective agreement.

EMPLOYEES' STATEMENT OF ISSUE:

On November 14, 17, December 19, 1977 and February 3, 1978, Conductor R.J. Wright and crew were required to set off, switch or pick up at Irricana a Canadian Pacific Junction Point and submitted claims in accordance with Article 11, Clause (g) of the Collective Agreement.

The Company reduced the claims contending that Irricana was no longer a junction point as the abandonment of that portion of the Irricana Subdivision between Mile 36.9 and Mile 72.2, was brought about by a decline in business activity and this was one of the exceptions listed in Article 47, Clause (1) of the Collective Agreement.

The Union contends that Article 47, Clause (1) is not applicable in this case as only a portion of the Subdivision has been abandoned and the traffic was merely diverted to be handled from the other end of the Subdivision (Bassano-Standard). The Union submits that the trackage between Mile 36.9 and Mile 72.2 was abandoned because the Company failed to keep that portion of the track in good repair.

The Union further contends that the Company is in violation of Article 47 by abandoning the trackage from Mile 36.9 to 72.2 as no notice was given to the Union in accordance with Clause (a) of Section 1 which states as follows:

> The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this Article.

The Union therefore contends that the claims of Conductor R.J. Wright and crew for Junction Switching at Irricana are in order.

FOR THE EMPLOYEES:

(SGD.) P. P. BURKE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. E. Timpson	– Assistant Supervisor, Labour Relations, Vancouver
B. P. Scott	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. P. Burke	– General Chairman, Calgary
R. T. O'Brien	– Vice President, Richmond
J. H. McLeod	– Vice Chairman, Calgary
H. L. Smyth	– Secretary, Calgary

INTERIM AWARD OF THE ARBITRATOR

In the instant case the Union advances a number of claims made by Conductor Wright in respect of junction switching at Irricana. It is the Company's position that these claims are not now arbitrable. The hearing of this matter was confined to the question of arbitrability.

In the Employees' Statement of Issue it is alleged that on the occasions in question Conductor Wright and crew were required to perform certain switching at a junction point, namely Irricana. The Company's defence to these claims, on the merits, would appear to be that Irricana is no longer a junction point, portions of the Irricana Subdivision having been abandoned. The Union's answer to this on the merits, would appear to be that that abandonment constituted a material change in working conditions, that notice of such change ought to have been given pursuant to Article 47 of the collective agreement, and that since no such notice was given, working conditions, including the payment for switching at Irricana as at a junction point must be continued.

The substantial issue for determination, then, is whether or not the abandonment of a portion of the Irricana subdivision and the elimination of Irricana as a junction point constituted material changes in working conditions.

That issue was raised as between the parties on January 6, 1978 by letter from the Union's General Chairman to the Company's General Manager. The General Manager gave a decision on the matter on January 11, 1978. By Article 39(b) of the collective agreement, that decision is final and binding unless, within 60 calendar days, arbitration proceedings are instituted. There was no request for arbitration within that period, and there was no extension of the time limits. By Article 99(d) the grievance was therefore invalid and not subject to further appeal.

It is not clear whether the Union's claim that the abandonment in question constituted a material change of working conditions included a claim for compensation in respect of the first three dates referred to in the Employees' Statement of Issue. It could not, of course, have included the claim in respect of February 3, 1978, which arose after the earlier grievance had been filed and indeed disposed of. It cannot be said, then, that the claim in respect of switching performed at Irricana on February 3, 1978, has been determined by the events above described, whatever might be the case with respect to the other claims.

Nothing that was raised at the hearing of this matter would prevent the Union from processing, and from proceeding to arbitrate the claim with respect to February 3, 1978. I do not find it possible, on the material now before me, to make any final ruling with respect to the arbitrability of the other claims.

The really substantial question, however, is whether it is still open to the Union to advance the contention that the abandonment constituted a material change in working conditions, within the meaning of Article 47 of the collective agreement. In my view, that matter has been resolved by the decision of the General Manager issued on January 11, 1978. That decision, not having been referred to arbitration within the time prescribed, became final and binding by virtue of the provisions of the collective agreement, and I now have no jurisdiction to hear the matter.

The abandonment of a portion of the Irricana Subdivision and the elimination of Irricana as a junction point does not give rise to "continuing grievance". Those events were single, definable incidents which might have given rise to timely grievances, and indeed there was such a grievance. That grievance has been disposed of in the manner described above, and it cannot now be re-opened. That was a final and binding determination of the matter, and was not comparable either to the withdrawal or to the discontinuance of a grievance.

Grievances may, of course, be brought from time to time, claiming that certain work was done and that it should be paid for at a certain rate. Where such grievances are processed in accordance with the provisions of the collective agreement, then they may proceed to arbitration. So it is with the claim of Conductor Wright that he should be paid

for certain switching on February 3, 1978, under Article 11(g). That matter is arbitrable. But in determining that matter, it must be recognized that the question whether or not the abandonment of part of the Irricana Subdivision and the elimination of Irricana as a junction point constituted a material change in working conditions requiring notice under Article 47, is a question which has been decided in a final and binding way, and cannot now be raised.

Thus, while the preliminary objection is well founded as far as the issue of substance is concerned, it must be my ruling that the claim – at least that in respect of February 3, 1978 – is an arbitrable one. The matter may be set down for further hearing at the Union's request.

(signed) J. F. W. WEATHERILL
ARBITRATOR